729.

SUPREME COURT OF THE UNITED STATES.

No. 50.

CAREY BAGWELL AND THE EXECUTORS OF MORGAN BYRNE, PLAINTIFFS IN ERROR,

VERSUS

GEORGE W. BRODRICK.

ERROR TO THE CIRCUIT COURT U. S. FOR MISSOURI.

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Langtree & O'Sullivan, Print.

GEORGE W. BRODRICK,
vs.
CAREY BAGWELL, Tenant, & PETER & LUKE, BYRNE, Executors of MORGAN BYRNE, dec'd.

Be it remembered, that on the fifteenth day of July, in the year of our Lord one thousand eight hundred and thirty-one, George W. Brodrick, a citizen of the State of Ohio, by Mr. Geyer, his attorney, filed in the office of the clerk of the district court of the United States, for the Missouri district, his declaration in an action of trespass and ejectment against Carey Bagwell, a citizen of the State of Missouri, in the words and figures following, to wit:

Declaration.

In the district court of the United States, for the district of Missouri, September Term, 1821.

DISTRICT OF MISSOURI, *ss:*

George W. Brodrick, a citizen of the State of Ohio, by Geyer, his attorney, complains of Carey Bagwell, a citizen of the State of Missouri, of a plea of tresspass and ejectment. For that whereas, the said George W. Brodrick, heretofore, and at the time of the committing the several grievances by the said Carey hereinafter mentioned, to wit: On the first day of July, in the year of our Lord eighteen hundred and thirty-one, in the district of Missouri aforesaid, was, and still is, legally entitled to the possession of a certain tract of land containing six hundred and forty acres, being section thirty-two, of township fifty, north, in range fifteen, west of the fifth principal meredian, with the rights, members and appurtenances thereunto belonging, also of four messuages, four barns, four stables, four gardens, four orchards, one thousand acres of arable land, one thousand acres of meadow land, one thousand acres of pasture land, one thousand acres of wood land, one thousand acres of land covered with water, and one thousand acres of other land with the appurtenances, situate and being in the county of Howard, in the State of Missouri, and district aforesaid, and being so legally entitled to the possession of the said lands and tenements, with the appurtenances, he, the said George, on the day and year aforesaid, at the district aforesaid, entered into the same, and became, and was possessed thereof. And the said George being so thereof possessed, the said Carey, afterwards, to wit, on the day and year aforesaid, at the district aforesaid, with force and arms entered into the said lands and tenements with the appertenances, to which the said George was so entitled as aforesaid, and ejected, expelled, put out, and removed the said George from his possession thereof, and thence hitherto kept and continued, and still doth keep and con-

tinue him so expelled, ejected and removed, and thence hitherto took, had and received, and still doth take, have, and receive, to the use of him, the said Carey, all the issues and profits of the said lands and tenements with the appurtenances, being of great yearly value, to wit, of the yearly value of five hundred dollars; and other wrongs to the said George, then and there did, against the peace, and to the damage of the said George, of two thousand dollars, and therefore he brings his suit, &c.

And thereupon, on the day of the filing of said declaration, a writ of summons, issued out of the office of the clerk of said court, in the words following, to wit:

Summons.

MISSOURI DISTRICT, *sct:*

The President of the United States of America, to the marshal of said district—greeting:

You are hereby commanded to summon Carey Bagwell that he be, and appear before the court of the United States, for the Missouri district, at the next term thereof, to be held at the city of Jefferson, within, and for said district, on the first Monday of September next, then and there to answer unto George W. Brodrick of a plea of trespass and ejectment to the damage of said plaintiff of two thousand dollars. Hereof fail not, and have you then there this writ.

Witness the honorable James H. Peck, Esquire, judge of the United States, for the Missouri district, the fifteenth [L. S.] day of July, eighteen hundred and thirty-one. Issued at office, in the city of Jefferson, under the seal of said court, the day and year last aforesaid.

JOSEPH GAMBLE, *Clerk.*

And said writ was duly returned by the marshal to whom the same was directed, with his return thereto, in the words following, to wit:

Marshal's Return.

Served this writ on Carey Bagwell, in the county of Howard, on the 7th day of August, 1831, by reading the same to him.

A. JONES,
U. S. Marshal, Missouri District.

And afterwards, to wit, at the September term of said district court, in the year of our Lord one thousand eight hundred and thirty-one, in the record of proceedings is the following entry.

Default.

SATURDAY, SEPTEMBER 10, 1831.

GEORGE W. BRODRICK,
vs.
CAREY BAGWELL.

Now at this day, come the said plaintiff, by his attorney, and the said defendant, although solemnly called, come not, but makes default, nor hath he pleaded to the action aforesaid of him the said plaintiff, whereby the said plaintiff remains therein undefended against him.

Judgment.

Therefore, it is considered by the court, that the said plaintiff, have and recover of the said defendant the possession of the said tract of land in the declararion mentioned—containing six hundred and forty acres, being section thirty-two, of township fifty, north in range fifteen, west of the fifth principal meridian line, with the rights, members and appertenances thereunto belonging. Also of four messuages, four barns, four stables, four gardens, four orchards, one thousand acres of arable land, one thousand acres of meadow land, one thousand acres of pasture land, one thousand acres of woodland, one thousand acres of land covered with water, and one thousand acres of other land, with the appurtenances, situate and being in the county of Howard, in the State of Missouri, and district aforesaid; but because it is unknown to the court what damage the said plaintiff hath sustained, by reason of the trespass and ejectment in the declaration mentioned.

Writ of Inquiry awarded.

Therefore, it is considered by the court, that the Marshal of the Missouri district, summon twelve good and lawful men of his district that they be, and appear at the next term of this court, then and there to enquire and assess what damages the said plaintiff hath sustained, by reason of the premises, and the same day is given to the said defendant.

And afterwards, the said cause was continued until the September term of said court, in the year eighteen hundred and thirty-two. In the record of proceedings of which said term, are the following entries, to wit:

Mo. to set aside.

MONDAY, 3d SEPTEMBER, 1832.

GEORGE W. BRODRICK,
vs.
CAREY BAGWELL.

Morgan Byrne comes into court here, by his attorney, and moves the court to set aside the judgment by default heretofore rendered in this cause, and to admit him as landlord of said defendant to be made a party to the said suit, and to defend the same, and files his affidavit of facts in support of said motion.

Default set aside.

TUESDAY, SEPTEMBER 4th, 1832.

GEORGE W. BRODRICK,
vs.
CAREY BAGWELL.

For cause show, it is ordered by the court here, that the judgment by default heretofore rendered in this cause, be set aside, and that Morgon Byrne, by leave of the court, be made co-defendant to the action aforesaid, and be permitted to defend the same, on payment of the costs of this term by the said Byrne; the said costs afterwards to abide the further decision of this court.

And thereupon the said defendants, by Mr. Bates, their attorney, filed their plea to the action aforesaid, as follows, to wit:

Pleas.

And the said defendants come and defend the force and injury, when, &c., and say that they are not guilty of the wrongs and grievances above laid to their charge, in manner and form as the said plaintiff has above in declaring alleged against them, and of this they put themselves upon the country, &c.

And this cause was continued to the September term of said court, in the year 1833. In the record of proceedings of which said term is the following entry:

Suggestion of Byrnes' death.

GEORGE W. BRODRICK,
vs.
CAREY BAGWELL, & MORGAN BYRNE.

This day comes the attorney of Carey Bagwell, and suggests to the court here, that since the last continuance of this cause, Morga..

Byrne, one of the defendants in the same, hath departed this life; and the same is not denied, and thereupon, on motion, this cause is continued to the next term.

And this cause was afterwards continued to the September term of said court, in the year 1834, at which said term, comes the said George W. Brodrick, by his attorney, and says that he cannot deny the suggestion aforesaid.

Abatement.

Wherefore he will not further prosecute his said action thereof against the said Morgan Byrne. Therefore, it is considered by the court here, that the said suit abate as to the said Morgan Byrne. And on motion, the same is continued until the next term of this court.

And afterwards, at the March term of said court, in the year 1835. In the record of its proceedings, is the following entry.

Appearance of Executrix.

GEORGE W. BRODRICK,
vs.
CAREY BAGWELL.

On motion, leave is given by the court to *Jane* Byrne, executrix of Morgan Byrne, deceased, to enter her appearances as co-defendant in the action aforesaid, and that she be permitted as such, executrix, to defend the same, and thereupon, by consent of parties, this cause is continued to the next term of this court.

And afterwards, to wit, at the September term of said court, in the year 1835, in the record of proceedings is the following entry, to wit:

Suggestions of Ex's. death.

GEORGE W. BRODRICK,
vs.
CAREY BAGWELL & MARGARET BYRNE,
Executrix of MORGAN BYRNE, dec'd.

Now, at this day, come again into court here, the said George W. Brodrick, and the said Carey Bagwell, by their attorneys aforesaid, and the said Margaret Byrne, executrix of Morgan Byrne, doth not come; and hereupon the said plaintiff, by his attorney, suggests to the court here, that since the last continuance of this cause, the said Margaret Byrne, executrix of Morgan Byrne, one of the parties, defendant in the plea aforesaid, hath departed this life, which is not denied, but admitted to be true.

Appearance of Executors.

And now here also, came Peter Byrne, and Luke Byrne, executors of the last will and testament of the said Morgan Byrne, and bring into court here the letters testamentry of the said Morgan Byrne, by which it sufficiently appears to the court, that the said Peter Byrne, and Luke Bryne, are executors of the said last will and testament, and have execution thereof, &c. Whereupon the said Peter Byrne and Luke Byrne, executors as aforesaid, by their said attorney, offer themselves against the said plaintiff to defend of and upon the premises in the plea aforesaid. And thereupon this cause is continued to the next term of this court.

And this cause was afterwards continued to the September term of said court, in the year 1836. In the record of proceedings at said term, are the following entries.

WEDNESDAY, 7 SEPTEMBER, 1836.

GEORGE W. BRODRICK,
vs.
CAREY BAGWELL, & others,
Executors of MORGAN BYRNE,

Now, at this day come the parties aforesaid, by their respective attorneys aforesaid, and thereupon also come a jury, to wit: Hiram H. Baber, John P. Thomas, Samuel L. Hart, Edward Fisher, Jefferson Y. Rogers, Henry P. Paulsel, Robert A. Ewing, Thomas Miller, Jacob Paulsel, Alfred Smith, William Stone, Jonathan Ramsey, twelve good and lawful men, who being duly elected, tried and sworn, well and truly to try the issue within joined between the parties aforesaid, and the argument of counsel not being finished, further proceedidgs in said cause were adjourned until the meeting of court on the next day.

Non Suit.

THURSDAY, 8th SEPTEMBER, 1836.

GEORGE W. BRODRICK,
vs.
CAREY BAGWELL, & the
Executors of MORGAN BYRNE.

Now, at this day come again the parties aforesaid, by their repective attorneys aforesaid, and therefore also come the same jury; and the said George W. Brodrick, although solemnly called, comes not, nor doth he further prosecute his action aforesaid against the said defendants; and therefore the said jurors are wholly discharged from giving any verdict of, and upon the premises aforesaid.

Whereupon, the said George W. Brodrick, by Mr. Geyer, his attorney, files his affidavit, and moves the court to set aside the non suit in this case. And it is thereupon ordered by the court here, that the said non suit be set aside, and the cause reinstated on payment of the costs of the present term by the said plaintiff.

And this cause was afterwards continued to the September term of said court, in the year 1837, at which said term in the record of proceedings, is the following entry, to wit:

Order to transfer papers, &c.

GECRGE W. BRODRICK,
vs.
CAREY BAGWELL, & the
EXR'S. OF MORGAN BYRNE.

It is ordered by the court, that this cause be continued and transferred to the next term of the circuit court of the United States, for the eight circuit, to be held at the city of St. Louis, in the district of Missouri, in compliance with the requisitions of an act of Congress entitled "An act supplementary to the act entitled 'An act to amend the judicial system of the United States.' Approved the 3d of March, 1837.'"

It is further ordered, that a transcript of the record of proceedings in said cause, and the original papers filed therein, be certified and sent to said circuit court. And that a schedule of said original papers be filed of record in this court.

And afterwards, to wit, on the fourteenth day of October, in the year of our Lord one thousand eight hundred and thirty-seven, a certified transcript of the record of proceedings of said district court in this cause, together with the original papers on file therein, were filed in the office of the clerk of the circuit court of the United States, for the district of Missouri. And afterwards, to wit, at the April term of said circuit court, in the year of our Lord one thousand eight hundred and thirty-eight, in the record of proceedings of said court, is the following entry, to wit:

TUESDAY, 10th April, 1838.

GEORGE W. BRODRICK,
vs.
CAREY BAGWELL & the Ex'rs of Morgan Byrne, dec'd.

Now, at this day, come the parties aforesaid, by their respective attorneys aforesaid, and thereupon also come a jury, to wit:

Jury.

Joseph V. Garnier, John C. Cowan, Thomas Andrews, Eli L. Clark, Elliott Lee, Daniel F. Lee, John H. Baldwin, Daniel Colkett, John H. McMillan, William Scott, Benjamin W. Ayres, Abel R. Corbin, twelve good and lawful men, who, being duly elected, tried, and sworn, well and truly to try the issue within joined between the parties aforesaid, upon their oath aforesaid, do say:

Verdict.

That the said defendants are guilty of the said trespass and ejectment in the declaration mentioned, in manner and form as the said plaintiff hath, in declaring, alleged, as to a certain tract of land containing six hundred and forty acres, being section thirty-two, of township fifty, north, in range fifteen, west of the fifth principal meridian line, with the rights, members, and appurtenances thereunto belonging; and they assess the damage of the said plaintiff by him sustained, by reason of the trespass and ejectment in the declaration mentioned, to the sum of one cent.

Judgment.

Therefore, it is considered by the court, that the said George W. Brodrick do recover the possession of the said premises, and also that he recover against the said Carey Bagwell, tenant, and Peter Byrne, and Luke Byrne, executors of Morgan Byrne, deceased, his damages aforesaid, in form aforesaid, by the jury assessed, together with his costs and charges by him about his suit in this behalf expended, and that he have thereof execution.

Writ of Possession awarded.

And the said plaintiff prays the writ of the United States, to cause him to have possession of the premises aforesaid, which is accordingly granted.

And thereupon the said defendants, by Mr. Allen, their attorney, excepted and tendered their bill of exceptions, in the words and figures following, to wit:

Be it remembered, that on the trial of this cause, the plaintiff read in evidence the following written testimony, to wit:

Plaintiff's Evidence.

A copy of the patent from the United States to John Robertson, Junior, dated 16th day of June, in the year 1820, which is in the words and figures following:

734. ~~11~~

Copy of Patent.

JAMES MONROE,

President of the United States of America.

To all to whom these presents shall come, greeting.

Know ye, that John Robertson, Junior, having deposited in the general land office a certificate, numbered one hundred and ninety-two, of the recorder of land titles at St. Louis, Missouri, whereby it appears that, in pursuance of an act of Congress, passed the 17th of February, 1815, entitled "An act for the relief of the inhabitants of the late county of New Madrid, in the Missouri territory, who suffered by earthquakes," the said John Robertson, Junior, is confirmed in his claim for six hundred and forty acres of land, being survey No. 2,810, and section thirty-two of Township fifty, north, in range fifteen, west of the fifth principal meridian line.

There is, therefore, granted by the United States, unto the said John Robertson, Jun'r, the tract of land above described; to have and to hold the said tract, with the appurtenances, unto the said John Robertson, Jun'r, his heirs and assigns, forever.

In testimony whereof, I have caused these letters to be made patent, and the seal of the general land office to be hereunto affixed. Given under my hand, at the [SEAL.] city of Washington, the seventeenth day of June, in the year of our Lord, one thousand eight hundred and twenty, and of the Independence of the United States, the forty-fourth.

By the President: (Signed) JAMES MONROE.

(Signed) JOSIAH MEIGS,
Commissioner of the General Land Office.

J. Robertson to A. H. Evans.

A deed from John Robertson, Jun'r, to Augustus H. Evans, dated 16th day of November, in the year 1830, which is in the words and figures following:

This indenture, made and entered into, this, the sixteenth day of November, one thousand eight hundred and thirty, by and between John Robertson, Junior, of the county of St. Clair, in the State of Illinois, of the one part, and Augustus H. Evans, of the city of St. Louis, in the State of Missouri, of the other part, witnesseth: That, whereas the above-named John Robertson, Junior, did, on the tenth day of June, one thousand eight hundred and twenty-one, grant, bargain, and sell, to the said Augustus H. Evans, his heirs and assigns, forever, a certain tract or parcel of land, lying in the county of Howard, in the State of Missouri, and being section thirty-two

(containing six hundred and forty acres) in township fifty, north, range fifteen, west of the fifth principal meridian. And in further complyance of said deed of conveyance, and for and in consideration of one hundred dollars, to us, the said John Robertson, Junior, and Eliza Robertson, wife of the said John Robertson, Junior, in hand paid by the said Augustus H. Evans, the receipt whereof is hereby acknowledged, hath granted, bargained, and sold, and by these presents doth grant, bargain, and sell, to the said Augustus H. Evans, his heirs and assigns, forever, all the above descript tract of land, of six hundred and forty acres, together with all the rights, privileges, and immunities thereon or thereto belonging, or in any wise appertaining to the same, which tract of land was patented to the said John Robertson, Junior, or his legal representatives, on the seventeenth day of June, eighteen hundred and twenty.

And it is further agreed, that they, the said John Robertson, Junior, and Eliza Robertson, will not warrant nor defend the title to the above described tract of land, but sell and convey all their right, title, claim, and interest, in and to the same, without any recourse on them or their heirs, for any part of the consideration money above mentioned.

As witness our hands and seals, the day and year first above written.

his
JOHN ⋈ ROBERTSON, Jr. [SEAL.]
mark.

[SEAL.]

Signed, sealed, and delivered, in presence of
MARON HOLCOMB,
LEWIS G. HOLCOMB.

STATE OF ILLINOIS—*St. Clair County, ss:*

Be it remembered, that on the eight day of March, 1831, John Roberson, Junior, in open court, in his own proper person before us, William Moore, Abel Fike, and Abraham Badgly, judges of the county commissioners court, for the county of St. Clair, in the State of Illinois, at the March term thereof, 1831, whose name is subscribed to the foregoing deed, or instrument of writing, who is personally known to the court to be the real person, who, and in whose name the acknowledgment is taken, and made, and hereby acknowledges the execution of the foregoing deed, or instrument of writing from him to A. H. Evans, for the conveyance of a tract of land in the county of Howard, in the State of Missouri, and declared in open court the same to be his act and deed for the purposes therein mentioned.

I, John Hay, clerk of the county commissioners court, in the county of St. Clair, in the State of Illinois, certify that the foregoing acknowledgment was duly taken in open court on the 8th day of

March, 1831, and that the above is truly copied from the records of said court as the same was entered upon that day.

In witness whereof, I, John Hay, have hereunto set my [L. S.] hand, and affixed the seal of said court, this 8th day of March, 1831, at Belleville, St. Clair county, Illinois.

JOHN HAY.

I, William Moore, presiding judge of the county commissioners court, of the county of St. Clair, in the State of Illinois, do hereby certify, that John Hay was, at the time of making the foregoing certificate, clerk of the county commissioners court of St. Clair county, State of Illinois, and that his said certificate is in due form *of*, and that full faith and credit are due to all his official acts as clerk of said court.

WM. MOORE.

Belleville, St. Clair, Illinois, March 8th, 1831.

A. H. Evans to G. W. Brodrick.

A deed from Augustus H. Evans to George W. Brodrick, dated 7th day of June, in the year 1831, which is in the words and figures following:

This indenture, made and entered into this, the seventh day of June, one thousand eight hundred and thirty-one, by, and between Augustus H. Evans, of the city of St. Louis, in the State of Missouri, of the one part, and George W. Brodrick, of the county of Franklin, in the State of Ohio, of the other part, witnesseth. That the above named A. H. Evans, hath this day, for and in consideration of the sum of five hundred dollars to him, in hand paid by the above named George W. Brodrick, the receipt whereof is hereby acknowledged, has granted, bargained and sold, and by these presents do grant, bargain, and sell unto George W. Brodrick, his heirs and assigns forever, all that certain tract or parcel*l* of land, lying in the county of Howard, in the State of Missouri, and being section thirty-two, containing six hundred and forty acres, in township fifty north, range fifteen west, of the fifth principal meridian; to have and to hold the same with the appurtenances, to the said George W. Brodrick, his heirs or assigns forever. And he, the said A. H. Evans, covenants and agrees to, and with the said George W. Brodrick, that he will warrant the title to the land above described, to be good in law and equity.

Witness my hand and seal, this day and year first above written.

AUGUSTUS H. EVANS, [SEAL.]

Signed, sealed and delivered in presence of

WILLIAM MILBURN,

PETER FERGUSON.

STATE OF MISSOURI—*County of Saint Louis,* ss.

Be it remembered, that on this thirteenth day of June, in the year of our Lord one thousand eight hundred and thirty-one, before me, Archibald Gamble, clerk of the circuit court for the county of Saint Louis, personally appeared the within named Augustus H. Evans, who is personally known to me to be the person whose name is subscribed to the within instrument of writing, as having executed the same, and acknowledged the same to be his act and deed, for the purposes therein mentioned.

In testimony whereof, I have hereunto set my hand and [SEAL.] affixed the seal of the said circuit court, at office, the day and year above written.

ARCHIBALD GAMBLE, *Clerk.*

And proved possession of the premises by defendant at the commencement of this suit. And the rents and profits of the premises in the declaration to be of the value of one cent. And here closed his testimony.

Defendant's Evidence.

The defendant then read in evidencce a transcript of notice to the recorder of land titles given by John Robertson, junr., which is in the words and figures following:

Notice to Recorder.

To Frederick Bates, Esquire, Recorder of Land Titles of the Territory of Louisiana:

SIR: Please take notice that John Robertson, junior, claims 750 arpents of land in the Big Prairie, he having inhabited and cultivated the same prior to, and on the 20th day of December, 1803, by and with the consent of the proper Spanish officer.

For claimant, JOS'H HUMPHREYS.

RECORDER'S OFFICE, ST. LOUIS, Missouri,
September 20th, 1836.

I certify the above to be truly copied from book E, page 147, of record in this office.

F. R. CONWAY,
Recorder of Land Titles in the State of Missouri.

Proceedings of Commissioners.

A copy of proceedings had before the Board of Commissioners on Land Claims, the 11th July, in the year 1811, which is in the words and figures following:

THURSDAY, July 11th, 1811.

Board met—present,
JOHN B. C. LUCAS,
CLEMENT B. PENROSE, & } *Commissioners.*
FREDERICK BATES,

Cer. 1,126—John Robertson, junior, claiming 750 arpents of land in Big Prairie, district of New Madrid, produces to the board a notice to the recorder, also permission to settle from Henry Peyrous, Commandant, dated 31st March, 1802.

The following testimony in the foregoing claim, taken as aforesaid, at New Madrid, June 22d, 1808.

William Coxe duly sworn, says, that premises were inhabited and cultivated in 1802, and constantly till fall of 1807—8 acres last year in cultivation—single man with a woman and child dependant on him. The board grant to John Robertson, junior, two hundred arpents of land, and order that the same be surveyed as nearly in a square as may be, and so as to include his improvements. Survey at expense of claimant.

Board adjourned till Monday next, 8 o'clock, A. M.
JOHN B. C. LUCAS,
CLEMENT B. PENROSE,
FREDERICK BATES.

RECORDER'S OFFICE, ST. LOUIS, Missouri,
September 20th, 1836.

I certify the above to be truly extractred from the minutes of the proceedings of the board of commissioners for ascertaining and adjusting the titles and claims to lands, as appears in book No. 5, pages 216 and 220, of record in this office.

F. R. CONWAY,
Recorder of Land Titles in the State of Missouri.

Opinion of Recorder.

A transcript of opinions of the recorder of land titles for the Territory of Missouri, certified 20th September, in the year 1836, which is in the words and figures following:

Opinions of the recorder of land titles for Missouri Ter'y, as to claims entered under act of 13th June, 1812, and proven before 1st Jan'y, 1814, as provided by the act of the 3d March, 1813. Comprehending also the claims in the late district of Arkansas, which by the act of 2d Aug. 1813, were permitted to be entered until 1st Jan'y, 1814, and proven until 1st of July, 1814; together with the extensions of quantity, provided by 4th sec. of the act of March, 1813, and confirmations under the act of 12th April, 1814.

137.

Warr. or ord. of survey.	Survey.	Notice to the Recorder.	Quantity claimed.	Where situated.	Poss'n., Inh'n., Cult. &c.	Opinions of the Recorder.
By U. S. Com'rs. for 200 arp's. Cer. 1,126.		John Robertson, jr.	750 arpens.	Big Prairie.		Granted 640. Acres E.

RECORDER'S OFFICE, St. Louis, Missouri, September 20th, 1836.

Byrne vs. Brodrick.

I certify the above to be truly extracted from book No. 2, page 20, except the caption, which is truly copied from page one, of book one, being two of the "five small books" with the following endorsement on the first, and also on the fifth book; believe to be in the handwriting of Frederick Bates, to wit: "These five small books are originals in the proper "handwriting of the undersigned, being his decisions on land claims since the adjournment of the late board. They "were arranged and fairly transcribed for report to the commissioner of the general land office, but not recorded in the "books, because they have no authority till sanctioned by Government. St. Louis, Nov. 1, 1815.

"FREDERICK BATES.

"*Recorder of Land Titles,*" *all in file in this office.*

F. R. CONWAY, *Recorder of Land Titles in the State of Missouri.*

J. Robertson, Jr. to E. Robertson.

A deed from John Robertson, Junr., to Edward Robertson, senr., dated 29th day of May, in the year 1809, which is in the words and figures following: This indenture, made and entered into this 29th day of May, Anno Domini, one thousand eight hundred and nine, by and between John Robertson, Junior, of the district of New Madrid, in the Territory of Louisiana, of the one part, and Edward Robertson, Senior, of the district and territory aforesaid, of the other part. Wit-

nesseth, that he, the said John Robertson, Junior, for, and in consideration of the sum of hundred dollars, lawful money of the United States, to him in hand paid, the receipt whereof he doth hereby acknowledge, have this day granted, bargained and sold, and doth by these presents grant, bargain and sell, *allienne* release, convey and confirm to him, the said Edward Robertson, his heirs and assigns, to have, and to hold forever, all that tract or parcel of seven hundred and fifty arpens of land, situate, lying, and being in the Big Prairie township, in said district. Three hundred and thirty arpens, of which said tract has been surveyed as thus; beginning at A, two hickories and a black oak, the southwest corner of lands claimed formerly by Philip Sheckler; thence on a line with the said Philip Sheckler's land, north 75, east the distance of thirty-five arpens, and $\frac{5}{6}$ of an arpent, to a post the southeast corner of said Philip Sheckler's claim or survey; thence south 15, east nine and three-fourths arpens to a post; thence on a line, William Cox claim or survey south, 75 west, thirty-four arpens to a stake, &c. &c., on the bank of Buyo or edge of Swamp, from thence persuing the meanders of the Buyo to the beginning, the balance of the said tract of seven hundred arpens, to be laid off over the said Buyo adjoining the southwest end of the survey of three hundred and thirty arpens to be laid off to the best advantage, consistant with law. The said tract of land above described, of seven hundred and fifty arpens, with the improvements and appurtenances thereto belonging, is hereby granted, bargained and sold, to the said Edward Robertson, to have and to hold forever to him, his heirs or assigns; further, the said John Robertson doth authorize and empower him, the said Edward, to apply for, and receive from Government, or its proper constituted authorities, a patent in his own name for the same, more or less. Moreover, the said John Robertson, for himself and his heirs, covenants, and agrees to, and with the said Edward Robertson to warrant and defend the said tract of seven hundred and fifty arpens of land, from the lawfull claim or claims of any person or persons whatsoever, claiming through, by, or under him.

In witness whereof, the said John Robertson, Jun., has hereunto subscribed his name, and affixed his seal, this date above.

his
JOHN ⋈ ROBESON, [SEAL.]
mark.

Signed, sealed, and delivered in presence of us,
JOHN B. WHEELER,
MOSES HAILEY,
AMOS RAYR.

LOUISIANA TERRITORY—*District of New Madrid, sct.*

This day, John Robertson, jr., personally appeared before me, justice of the peace in and for the district of New Madrid aforesaid,

and acknowledged before me, that the within instrument of writing was his acct and deed for the purposes therein mentioned, and that all the land therein mentioned as intended to be sold was thereby granted, bargained and sold to Edward Robertson, therein mentioned, his heirs and assigns, to have and to hold forever.

Given under my hand and seal, this day of Anno Domini, 1808.

J. PICARD, [SEAL.]

MISSOURI TERRITORY—*New Madrid County, ss.*

Personally appeared before me, a justice of the peace, within and for the said county, John B. Wheeler, one of the subscribing witnesses to within deed of conveyance, and made oath that he saw the within mentioned and signed, John Robertson, junior, sign, seal, and deliver, and acknowledge the within above mentioned deed, for the purposes therein contained.

Given under my hand this 21st day of April, 1814.

RICH. H. WATERS, *J. P.*

E. Robertson to Morgan Byrne.

A deed from Edward Robertson, senr., to Morgan Byrne, dated 30th October, in the year 1813, which is in the words and figures following:

This indenture, made and entered into, this October 30th day, in the year of our Lord one thousand eight hundred and thirteen, by, and between Edward Robertson, and wife, Katharine Robertson, of the county of New Madrid, in the Territory of Missouri, of the one part, and Morgan Byrne, of the county of Cape Gerandeau, and Territory aforesaid, of the other part, witnesseth, that they, the said Edward Robertson, and Katharine, his wife, for, and in consideration of the sum of three hundred dollars, lawful money of the United States, to them in hand paid, the rec't. whereof they doth hereby acknowledge, have this day granted, bargained, and sold, and doth by these presents, grant, bargain and sell, alien, release, convey and confirm unto him, the said Morgan Byrne, his heirs or assigns, to have and to hold forever, three hundred arpents of land, out of a tract of land the head-right of John Robertson, junr., situate and being in the Big Prairy township, and county of New Madrid, adjoining the land of William Cox on the south, on the king's road on the east, and on Wm. Sheeklers on the north. The said tract of land, above described, of three hundred arpents, with the improvements and appurtenances thereunto belonging, is hereby granted, bargained and sold, to the aforesaid Morgan Byrne, to have and to hold forever, to him, his heirs or assigns; further, the said Edward Robertson, and his wife, Katharine Robertson, for themselves, their heirs, &c., covenants and agrees to, and with the said Morgan Byrne, to warrant and defend the said tract of three hundred arpents of land,

from the lawful*l* claim or claims of any person or persons whatsoever, a good and lawful right and title, to the above tract of three hundred*red* arpents of land, sold by them.

In witness whereof, they, the said Edward and Katharine Robertson, have hereunto subscribed their names and affixed their seals, this day and date first above written.

EDWARD E. R. ROBERTSON, [SEAL.]
KATHARINE ⋈ ROBERTSON, [SEAL.]

In presence of
RICH'D. SESSUMS,
STEPHEN ROSS.

MISSOURI TERRITORY—*County of New Madrid.*

This day Edward Robertson and Katharine Robertson, his wife, personally appeared before me, John B. Wheeler, a justice of the peace, and acknowledged the within instrument of writing to be their act and deed, for the purposes therein mentioned, and all the land therein mentioned, intended to be conveyed, was thereby granted, bargained and sold to Morgan Byrne, his heirs or assigns, to have and to hold forever. And the said Katharine Robertson, the wife of the said Edward Robertson, having been examined in private, separate and apart from her husband, acknowledged that she had signed the within instrument of writing and deed of conveyance, of her own free voluntary will and accord, without compulsion, fear, restraint or constraint.

Given under my hand and seal, this 30th day of October, 1813.

JOHN B. WHEELER, *J. P.*

A deed from Edward Robertson, senr., to Morgan Byrne, dated 11th September, in the year 1816, which is in words and figures following:

E. Robertson to Morgan Byrne.

This indenture, made and concluded upon this 11th day of September, in the year of our Lord one thousand eight hundred and sixteen, by and between Edward Robertson, senr., and Katharine, his wife, of the county of New Madrid, and Territory of Missouri, of the one part, and Morgan Byrne, of the county of Cape Gerardeau, and territory aforesaid, of the other part, witnesseth, that the said Edward Robertson, senr., and Katharine, his wife, for and in consideration of the full and just sum of two hundred and fifty dollars, current money of the United States, to them in hand paid by the said Morgan Byrne, at and before the ensealing and delivery of these presents, the reeeipt whereof is hereby acknowledged, hath this day granted, bargained and sold, and by these presents, do grant, bargain and sell, convey and confirm unto him, the said Morgan Byrne, his heirs and assigns forever, all that tract of two hundred*red* and

fifty arpents of land, being part of the head-right of John Robertson, junr., of seven hundred and fifty arpents, reserving two hundred arpents of said seven hundred and fifty arpents, which is sold to William Shelby, the ballance of three hundred arpents being heretofore sold to the said Morgan Byrne, situate, lying and being in the Big Prairie township, to have and to hold unto him, the said Morgan Byrne, his heirs and assigns forever, together with all and singular, the privileges and appurtenances thereunto belonging or in anywise appertaining, and the said Edward Robertson, senr., and Katharine, his wife, for themselves, their heirs, &c., doth hereby agree to, and with the said Morgan Byrne, his heirs and assigns forever, to warrant and forever defend the above described, and hereby conveyed two hundred and fifty arpents of land, to him, the said Morgan Byrne, his heirs and assigns forever, against the claim or claims of them their heirs, &c. and against the claim or claims of all manner of person or persons whatsoever.

In testimony whereof, the said Edward Robertson, and Katharine his wife, have hereunto subscribed their names and affixed their seals, the day and date first within written.

EDWARD E. R. ROBERTSON, senr., [SEAL.]

her

KATHARINE ⋊ ROBERTSON, [SEAL.]

mark.

Signed, sealed and delivered in the presence of us

THOMAS PHILLIPS,

WILLIAM BARON.

TERRITORY OF MISSOURI—*County of New Madrid, ss.*

Be it remembered, that on the fifth day of October, in the year of our Lord one thousand eight hundred and sixteen, personally came and appeared before Rich. H. Waters, clerk of the circuit court, in and for the county of New Madrid, the above signed Edward Robertson, senr., and Katharine, his wife, and acknowledged the within and above to be their free and voluntary act and deed, hands and seals, for the uses and purposes therein expressed. At the same time came Katharine Robertson, wife of the said Edward, and being, by me made acquainted with the contents of the within deed, and being by me examined privately and apart, from and out of the hearing of her said husband, declares that she executed the same freely and of her free will and accord, without restraint, constraint, or by any means of compulsion whatever, and hereby relinquishes her right to dower of, in, and unto the within granted, bargained and sold land and premises, &c.

In testimony whereof, there being no judicial seal yet procured to said court, I have hereunto subscribed my name, and affixed my own private seal, this day and date within first written.

RICH. H. WATERS, *Clerk*, [SEAL.]

A copy of deed from Edward Robertson, senr., to William Shelby, dated 29th October, in the year 1816, which is in the words and figures following. On the 18th day of December, 1816, received for record, and the same day recorded the following deed.

E. Robertson to William Shelby.

This indenture, made and entered into this day, the twenty-ninth day of October, eighteen hundred and sixteen, by and between Edward Robertson, senr., and his wife, Catharine Robertson, of the Territory of Missouri, and county of New Madrid, of the one part, and William Shelby, of the territory and county aforesaid, of the other part, witnesseth, that the aforesaid Edward Robertson, and his wife, Catharine Robertson, for and in consideration of the sum of four hundred dollars, to them in hand paid, at or before the sealing and delivery of these presents, the rec't. whereof they do hereby acknowledge, and themselves therewith fully satisfy and content, and paid, have this day granted, bargained, sold, aliened, released, conveyed and confirmed, and doth by these presents grant, bargain, sell, alien, release, convey and confirm unto him, the said William Shelby, his heirs and assigns forever, a certain tract or parcel of land, being in the Territory and county aforesaid, containing two hundred arpents, about twenty-five miles north of the town of New Madrid, and joining the lands of Morgan Byrnes, on the north by William Cox, on the south the king's road, on the east and on the west by Lake St. Mary, it being a part of the head-right of John Robertson, junr., together with all the improvements and appurtenances thereunto belonging, to him, the said William Shelby, his heirs and assigns forever, and the aforesaid Edward Robertson, and his wife, Catharine Robertson, covenants to, and with the aforesaid William Shelby, his heirs, &c., that they will warrant and forever defend a good and sufficient right and title, to the above described, bargained and sold premises, with all the appurtenances thereunto belonging, against themselves, their heirs, &c., or against the lawful claim of any person whatsoever.

In witness whereof, they have hereunto set their hands and seals, day and date above written. The above interlining done before signing.

his
EDWARD E. R. ROBERTSON, senr.
mark.
her
CATHARINE ⋈ ROBERTSON,
mark.

Signed, sealed and acknowledged in the presence of
RICH'D. SESSUMS,
EDWARD ROBERTSON, junr.

TERRITORY OF MISSOURI—*County of New Madrid, ss.*

Be it remembered, that on the second day of December, in the year 1816, personally came and appeared before me, Rich. H. Waters, clerk of the circuit court, in and for said county, Edward Robertson, junr., and made oath on the Holy Evangels of Almighty God, that he saw the within named and signed Edward Robertson, senr., and Katharine Robertson, his wife, sign, seal and deliver, and heard them acknowledge the within instrument in writing to be their free and voluntary act and deed, hands and seals, for the use and purposes therein expressed, and that signed the same as a witness, together with Richard Sessums, and in the presence, and at the request of the said Edward and Katharine, his wife.

In testimony whereof, there being no judicial seal yet procured to said court, I have hereunto subscribed my name, and affixed my own private seal, this day and date first above writen.

RICH. H. WATERS, *Clerk.* [SEAL.]

I, Alp. De Laroderie, clerk of the circuit court, for the county of New Madrid, in the State of Missouri, do certify that the foregoing is a true and perfect copy of the record in my office, in record book No. 8, page 208.

In testimony whereof, I have hereunto set my hand, at office, the eleventh day of April, in the year of our Lord one thousand eight hundred and twenty-seven.

ALP. DE LARODERIE.

A copy of deed from William Shelby to Levi Grimes, dated 2d day of December, in the year 1816, which is in the words and figures following. On the 25th day of February, 1817, received for record, and the same day recorded the following deed:

Wm. Shelby to Levi Grimes.

This indenture, made and entered into this second day of December, eighteen hundred and sixteen, by and between William Shelby and Sally Shelby, his wife, of the Territory of Missouri, and county of New Madrid, of the one part, and Levy Grimes, of the Territory of Illinois, and Johnson county, of the other part, witnesseth, that the aforesaid William Shelby, and wife Sally, for and in consideration of the sum of four hundred dollars, current money of the United States, to them in hand paid, at and before the ensealing and delivery of these presents, the rec't whereof they do hereby acknowledge, and themselves therewith fully satisfied, content and paid, have this day granted, bargained and sold, aliened, released and conveyed and confirmed, and doth by these presents grant, bargain, sell, alien, release, convey and confirm unto him, the said Levy Grimes, his heirs and assigns forever, a certain tract or parcel of land lying and being in the territory and county aforesaid, containing two hundred arpents, about twenty-five miles north of the town of New Madrid, and join-

ing the land of Morgan Byrne on the north, by William Coxe on the south, the king's road on the east, and on the west by Lake St. Mary, it being a part of the head-right of John Robertson, junr., together with all the improvements and appurtenances thereunto belonging, to him, the said Levy Grimes, his heirs and assigns forever, and the aforesaid William Shelby and Sally Shelby, his wife, covenants and agrees to, and with the aforesaid Levy Grimes, his heirs, executors, administrators and assigns, that they warrant and forever defend a good and sufficient right and title to the above described, granted, bargained and sold premises, with all the appertainances thereunto belonging, against themselves, their heirs, &c., and against the lawful claim of any person or persons whatever.

In witness whereof, they have hereunto set their hands and affixed their seals, date and date above written.

WM. SHELBY, [SEAL.]
her
SARAH ⋈ SHELBY, [SEAL.]
mark.

In presence of
JOSEPH MCCRAVEN,
his
EDWIN ⋈ GRIMES,
mark.
RICHARD H. WATERS,
As to SARAH SHELBY.

TERRITORY OF MISSOURI—*County of New Madrid, ss.*

Be it remembered, that on the twenty-fifth day of February, in the year eighteen hundred and seventeen, personally came and appeared before me, Rich. H. Waters, clerk of the circuit court, in and for the county of New Madrid, the within named William Shelby, and acknowledged the within deed of bargain and sale, to be his act and deed, hand and seal for the use and purposes therein expressed; at the same time Sarah Shelby, wife of the within named William Shelby, appeared and being by me made acquainted with the contents of the within deed, and examined by me from and out of the hearing of her said husband, declared that she executed the same freely and of her own free will and accord, without being induced thereto by fear or threats, or ill usage of her said husband, or for fear of gaining his displeasure, and without restraint or constrant, and that she freely relinquishes her right to dower of, in and unto the within bargained and sold land and premises, &c.

In testimony whereof, there being no judicial seal yet procured to said court, I have hereunto subscribed my name and affixed my own private seal, this day and date above written.

RICH. H. WATERS, *Clk.* [SEAL.[

I, Alpso. De Laroderie, clerk of the circuit court for the county of New Madrid, in the State of Missouri, do certify that the foregoing

is a true and perfect copy of the record in my office, in Book 9, page 11.

In testimony whereof, I have hereunto set my hand at office, this eleventh day of April, in the year of our Lord one thousand eight hundred and twenty-seven.

ALP. DE LARODERIE.

Levi Grimes to Morgan Byrne.

A Deed from Levi Grimes to Morgan Byrne, dated 26th day of February, in the year 1817, which is in the words and figures following:

This agreement made this twenty-sixth day of February, in the year one thousand eight hundred and seventeen, between Levi Grimes, of the county of Johnson, and Territory of Illinois, of the one part, and Morgan Byrne, of the county of Cape Gerardeau, and Territory of Missouri, of the other part, witnesseth, viz: That the said Levi Grimes for, and in consideration of the sum of four hundred dollars, to him in hand paid by the said Morgan Byrne, the receipt whereof he doth hereby acknowledge, doth grant, bargain, and sell unto Morgan Byrne, his heirs and assigns, two hundred arpents of land, lying in township of the Big Prairie, and bounded as follows: On the east, by the King's road; on the south, by lands formerly owned by William Cox; on the west, by Lake St. Mary's; on the north, by lands of the aforesaid Morgan Byrne, being part of the head-right of John Robertson, junior, whereon William Shelby now lives; and the said Levi doth hereby warrant and defend the premises aforesaid from him, his heirs or assigns, unto the said Morgan, his heirs, executors, administrators, or assigns.

In witness whereof, I have hereunto set my hand and seal, the day and year first above written.

his
LEVI ⋈ GRIMES, [L. S.]
mark.

Present: HENRY ECKHART,
R. S. THOMAS.

Personally appeared before me, a judge of the circuit court for the southern circuit, the within named Levi Grimes, who acknowledged the within conveyance to be his act and deed, this 28th day of February, 1817.

RICHARD S. THOMAS,
Judge of the Southern Circuit.

An extract from registry of relinquishments in office of the recorder of land titles at St. Louis, certified 12th June, in the year 1837, which is in the words and figures following:

Extract from Registry of Relinquishments.

A List of Relinquishments of Lands materially injured by Earthquakes in the late county of New Madrid, (present) State of Missouri, under the act of Congress of 17th February, 1815.

Loc'n cert.	Claimants of Record.	Quantity	Situation.	Relinquishment by whom, and General Remarks.
448	John Robertson, junior.	640 acres	Big Prairie.	Morgan Byrne, legal Representative.

RECORDER'S OFFICE,
ST. LOUIS, Missouri, June 12, 1837.

I certify the above to be truly extracted from the registry on file in this office, of lands relinquished to the United States, under the provisions of the act of Congress of the 17th February, 1815, entitled "An act for the relief of the inhabitants of the late county of New Madrid, in the Missouri Territory, who suffered by earthquakes."

F. A. CONWAY, *United States Recorder of Land Titles in the State of Missouri.*

A copy of certificate of location, dated September 1818, in favor of John Robertson, junior, or his legal representatives; which is in the words and figures following:

Copy of Certificate of Location.

No. 448.

ST. LOUIS, *Office of the Recorder of Land Titles,* September, 1818.

I certify that a tract of six hundred and forty acres of land, situate, Big Prairie, in the county of New Madrid, which appears from the books of this office to be owned by John Robertson, junior, has been materially injured by earthquakes; and that in conformity with the provisions of the act of Congress of the 17th February, 1815, the said John Robertson, junior, or his legal representatives, is entitled to locate six hundred and forty acres of land, on any of the public lands of the Territory of Missouri, the sale of which is authorized by law, (vide Com'rs Cer'e, No. 1,126, ext'd.)

FREDERICK BATES.

SURVEYOR'S OFFICE, ST. LOUIS, 23d August, 1832.

The above is correctly copied from the original certificate, No, 448, in the name of John Robertson, junior, on file in this office.

E. T. LANGHAM,
Sur. Public Lands, Ill. and Mo.

Copy of Location.

A Copy of Location made by Morgan Byrne, dated 8th October, in the year 1818; which is in the words and figures following:

Morgan Byrne, as the legal representative of John Robertson, jun., enters six hundred and forty acres of land, by virtue of a New Madrid certificate, issued by the recorder of land titles for the Territory of Missouri, and dated St. Louis, September 1818, and numbered 448, in the following manner, to wit, to include section No. thirty-two, in township No. fifty, north of the base-line, range No. 15, west of the fifth principal meridian.

St. Louis, Oct. 8th, 1818. MORGAN BYRNE.

SURVEYOR'S OFFICE, ST. LOUIS, August 23d, 1832.

The above is correctly copied from the original, on file in this office, and which is recorded on page 271 of the "Record of entries of locations of land in the Missouri Territory, in conformity to an act of Congress, dated 17th of February, 1815, entitled 'An act for the relief of the inhabitants of the late county of New Madrid, in the Missouri Territory, who suffered by earthquakes.'"

E. T. LANGHAM,
Sur. Public Lands. Ill. and Mo.

And here the defendants closed their testimony.

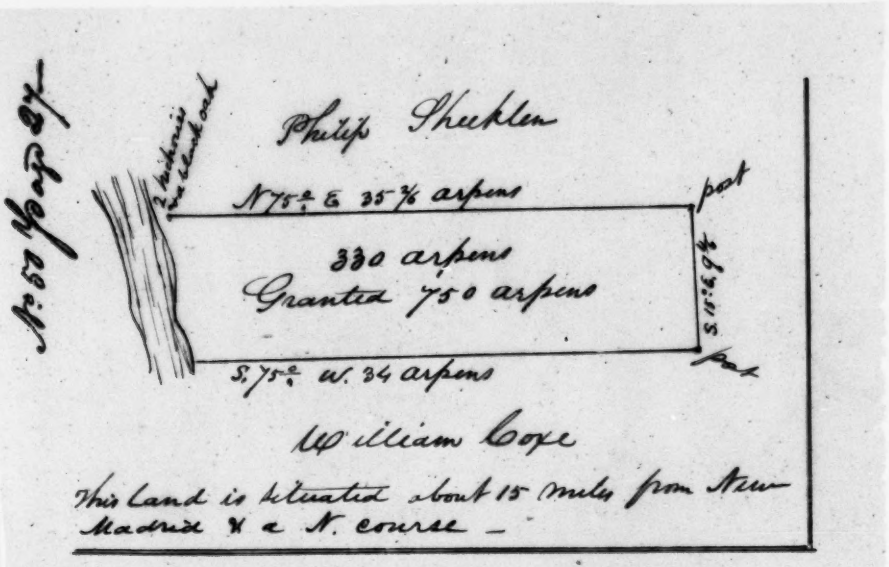
By Plaintiff Notice to Commissioners.

The plaintiff then read in evidence a copy of notice by John Robertson, of claim for 330 arpens, and proceedings on same had before the Board of Commissioners on land claims, on the 24th of March, in the year 1806, and on the 15th August, in the year 1811, which copy of notice and proceedings before Board of Commissioners are in the words and figures following:

Claim.

John Robertson claims to hold 330 arpens of land, situated in the district of New Madrid, under the 2d section of the act of Congress.

[For Plat see original, page 23.]


Philip Sheeklen
N 75° E 35 ⅞ arpens
330 arpens
Granted 750 arpens
S. 75° W. 34 arpens
William Cope
This land is situated about 15 miles from New Madrid N a N. course

I do certify that the above plan represents 330 a. of land, situate in the district of New Madrid, and surveyed by me at the request of John Robertson, junior, who claims the same as part of his settlement right by virtue of the 2d section of the act of Congress respecting such claims, passed the 2d day of last March.

Given under my hand at New Madrid, this 7th day of February, 1806. JOSEPH STOREY.

Received for record, St. Louis, February 27, 1806.
ANTOINE SOULARD.

March 24th, 1806. The Board met agreeably to adjournment.

Present: The Honorable John B. C. Lucas and James L. Donaldson, Esq'res.

John Robertson claiming under the 2d section of the act, 330 arpens of land, situate, lake St. Marie, produces a certificate of survey, dated February 28th, 1806.

Jacob Myers being duly sworn says, that claimant did, prior to, and on the 20th day of December, 1803, actually inhabit and cultivate the said tract of land, and was then of the age of 21 years, and upwards.

The Board grant to said claimant, 750 arpens of land, situate as aforesaid, provided so much be found vacant there.

THURSDAY, August 15th, 1811. Board met.

Present: Clement B. Penrose and Frederick Bates, Commissioners.

John Robertson claiming 330 arpens of land, see book No. 1, page 211. It is the opinion of the Board, that this claim ought not to be granted.

RECORDER'S OFFICE, ST. LOUIS, Missouri, July 13th, 1831.

I certify the foregoing, in part, to be truly copied from record book A, page No. 427, and the balance from the minutes of the proceedings of the Board of Commissioners for ascertaining and adjusting the titles and claims to lands, as appears in book No. 1, page No. 211, and in book No. 5, pages Nos. 307 and 308, all of record in this office.

F. R. CONWAY,
Recorder of Land Titles in the State of Missouri.

A transcript of opinion of recorder of land titles for Territory of Missouri, certified 25th July, in the year 1831; which is in the words and figures following:

Opinion of Recorder.

Opinions of the recorder of land titles for Missouri Territory, as to claims entered under act of 13th June, 1812, and proven before 1st January, 1814, as provided by the act of the 3d March, 1813. Comprehending also the claims in the late district of Arkansas, which by act of 2d August, 1813, were permitted to be entered until 1st January, 1814, and proven until 1st of July, 1814. Together with the extensions of quantity provided by 4th section of the act of 3d March, 1813, and confirmations under the act of 12th April, 1814.

War't. or *or* order of survey.	Survey.	Notice to the Recorder.	Quantity of Land.	Where situated.	Poss'n., Inh'n., or Cult'n.	Opinions of the Recorder.
	Extracted 7th Feb'y., 1806, by Story.	John Robertson.	330 arpens.	Lake St. Mary. New Madrid.	Poss'n, inh'n, & cult'n prior to, and on 20. Dec., 1803.	Granted 330 arpens, A, p. 427, 5 p. 308, rep. 380.

RECORDER'S OFFICE, ST. LOUIS, July 25th, 1831.

I, F. R. Conway, recorder of land titles in the State of Missouri, do certify the above to be truly extracted from book No. 1, page numbered as above, except the caption, which is taken from page No. 1–2 of same book, being one of the "five small books," with the following endorsement on the first, and also on the fifth book, in the proper hand-writing of Frederick Bates, to wit:

"These five small books are originals in the proper hand-writing of the undersigned, being his decisions on land claims since the adjournment of the late board. They were arranged and fairly transcribed for report to the commissioner of the general land office, but not yet recorded in the books, because they have no authority till sanctioned by Government.

St. Louis, Nov. 1, 1815. FREDERICK BATES, *Recorder of Land Titles.*"

Copy of Certificate of Location.

A copy of cerficate of location in favor of John Robertson, or his legal representatives, dated 18th September, in the year 1818; which is in the words and figures following:

No. 447. ST. LOUIS, OFFICE OF RECORDER OF LAND TITLES, September 18, 1818.

I certify that a tract of three hundred and thirty arpens of land, situate on Lake St. Mary, in the county of New Madrid, which appears from the books of this office to be owned by John Robertson, has been materially injured by earth-

quakes; and that in conformity with the provisions of the act of Congress of 17th February, 1815, the said John Robertson, or his legal representatives, is entitled to locate three hundred and thirty arpens of land on any of the public lands of the Territory of Missouri, the sale of which is authorized by law. (Vol. 1, p. 33.)

Signed FREDERICK BATES.

By Defendant. Extract from Registry of Relinquishments.

The defendants then read in evidence an extract from registry of relinquishments in the office of the recorder of land titles at St. Louis, certified the 20th September, in the year 1836; which is in the words and figures following:

A List of Relinquishments of Lands materially injured by Earthquakes in the late county of New Madrid, (present,) State of Missouri, under act of Congress of 17th February, 1815.

No. Loc., Cert.	Claimants of Record.	Quantity.	Situation.	Relinquishments by whom, and General Remarks.
447	John Robertson.	330 arp's.	Lake St. Mary.	James Tanner, legal representative.
448	John Robertson, junior.	640 arp's.	Big Prairie.	Morgan Byrne, legal representative.

Recorder's Office, St. Louis, Missouri, Sept. 20th, 1836.

I certify the above to be truly extracted from the list of relinquishments of lands materially injured by earthquakes in the late county of New Madrid, present State of Missouri, under the provisions of the act of Congress of 17th February, 1815, on file in this office, and that it appears from entries made in the book of New Madrid, location certified issued; that certificate of new location, No. 447, was delivered to Jacoby for James Tanner, and that certificate of new location, No. 448, was delivered to Morgan Byrne.

F. R. CONWAY, *Recorder of Land Titles in the State of Missouri.*

Value of Premises.

And proved by the admission of plaintiff, that the premises in dispute, are of the value of three thousand dollars.

Which evidence herein before set forth, was all the evidence in the cause. And thereupon, the defendants by their counsel, moved the court to instruct the jury.

Instructions.

1st. The entry or New Madrid location made by Morgan Byrne in

his own name, as given in evidence in this case, is proof of legal title to the land, and is sufficient defence against all persons who do not show better legal title to the same land.

2. That the patent, a copy of which has been given in evidence by the plaintiff, did not vest in the patentee any better legal right to the land in question, than he had before the date thereof as against the defendants claiming the same land adversely by other title.

3. That after the entry, and before the patent, Morgan Byrne had a legal title to the land in question, sufficient to enable him to prosecute or defend an action of ejectment therefor. And that the issuing of the patent could not in law divest that title.

4. That if the jury believe the patent, copy of which has been offered in evidence by plaintiff, issued on the location made by Morgan Byrne, and shown in evidence on part of defendants in the same, the patent is not such title, as will avail against the location. Which four several instructions the court refused to give, to which refusal the defendants by their counsel except and pray the court to sign and seal this their bill of exceptions in testimony thereof, and make it a part of the record in this cause, which is done accordingly.

J. CATRON, [SEAL.]
R. W. WELLS. [SEAL.]

MISSOURI DISTRICT, *sct.*

I, Joseph Gamble, clerk of the circuit court of the United States for the district of Missouri, certify that the foregoing is a full and complete transcript of the record and proceedings of said court, in a certain matter of controversy therein determined between George W. Brodrick, a citizen of the State of Ohio, plaintiff, and Carey Bagwell, and the executors of Morgan Byrne, deceased, defendants, as the same is of record in my office.

I also certify, that the original bond, of which a copy is hereto annexed; and also, a copy of the foregoing writ of error, were duly deposited and filed in the office of the clerk of said court, on the 12th day of April, in the year one thousand eight hundred and thirty-eight.

In testimony whereof, I hereto subscribed my name, and affix the seal of said circuit court at office, in the city of St. [L. S.] Louis, the twenty-eighth day of April, in the year of our Lord one thousand eight hundred and thirty-eight.

J. GAMBLE.

MISSOURI DISTRICT, *sct.*

The President of the United States to the Judges of the Circuit Court of the United States for the Eighth Circuit, and District of Missouri, greeting:

Because in the record and proceedings, and also in the rendition of a judgment of a plea in the said circuit court, between George W.

Brodrick, who is a citizen of the State of Ohio, demandant, and Carey Bagwell, tenant, and Peter Byrne, and Luke Byrne, executors of Morgan Byrne, deceased, who are citizens of the State of Missouri, defendants, a manifest error hath happened to the great damage of the said defendants as aforesaid, as by their complaint appears.

We being willing, that error, if any should be, duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, you distinctly and openly send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, so that you have the same together with this writ, before the chief justice and associate justices of said Supreme Court, on the second Monday of January next, at the city of Washington, the present seat of the National Government, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the honorable Roger B. Taney, Chief Justice of the
[L. S.] said Supreme Court, the twelfth day of April, in the year of our Lord one thousand eight hundred and thirty-eight.

Issued at office, in the city of St. Louis, under the seal of the circuit court of the United States for the eighth circuit and district aforesaid.

JO. GAMBLE, *Clerk*.

Know all men by these presents that I, Beverley Allen, am held and firmly bound unto George W. Brodrick, in the sum of four hundred dollars, for the payment whereof I bind myself, my heirs, &c., as witness my hand and seal, this 12th day of April, in the year 1838.

The condition of this obligation is such, that whereas Carey Bagwell, and Peter Byrne, and Luke Byrne, executors of Morgan Byrne, deceased, have sued out of the Supreme Court of the United States, a writ of error, directed to the judges of the circuit court of the United States for the Missouri district, returnable to the said Supreme Court, to be held at Washington on the second Monday of January next. Now, if the said Carey Bagwell, tenant, and Peter Byrne, and Luke Byrne, executors of Morgan Byrne, deceased, who are plaintiffs in error, shall prosecute their writ with effect, and answer all damages and costs, if they fail to make their plea good, then the above obligation to be void.

BEVERLEY ALLEN. [SEAL.]

Acknowledged before me in open court, at St. Louis, the 12th of April, 1838.

J. CATRON,
An Associate Justice of the Supreme Court U. S.

A true copy:

Teste: JO. GAMBLE, *Clerk U. S. C. C.*

Citation.

United States of America to George W. Brodrick, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of January next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the Missouri district, wherein Carey Bagwell, tenant, and Peter Byrne, and Luke Byrne, executors of Morgan Byrne, deceased, are plaintiffs in error, and George W. Brodrick, is defendant in error, to show cause, if any there be, why judgment rendered against the said Carey Bagwell, tenant, and Peter Byrne, and Luke Byrne, executors of Morgan Byrne, deceased, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable John Catron, one of the justices of the Supreme Court of the United States, this 12th day of April, in the year one thousand eight hundred and thirty-eight.

J. CATRON.

UNITED STATES OF AMERICA, *Missouri District*, ss.

Personally appeared Beverley Allen before the undersigned, John Catron, an associate justice of the Supreme Court of the United States, at St. Louis, in said district, and made oath, that on this thirteenth day of April, in the year 1838, he served the above citation on Henry S. Geyer, Esq., attorney of record for the said George Brodrick named in said citation, in the circuit court of the United States for said district, in suit mentioned in said citation, by delivering to him, the said Henry S. Geyer, a true of same citation at St. Louis aforesaid.

BEVERLEY ALLEN.

Sworn to, and subscribed before me, at St. Louis, this 13th April, 1838.

J. CATRON,
An Associate Justice S. C. U. S.

In the Supreme Court of the United States, January term, A. D. 1839.

BAGWELL, (tenant,) and BYRNE'S EXECUTORS,
vs.
BRODRICK.
} In Error.

And now, at this day, came the said Carey Bagwell, tenant, and Peter Byrne, and Luke Byrne, executors of Morgan Byrne, deceased, by , their attorney, and say, that in the record and proceedings aforesaid, and also in giving the judgement aforesaid, there is manifest error in this, to wit, that by the record aforesaid, it appears that the judgment aforesaid, in form aforesaid given,

was given for the said George W. Brodrick against the said Carey Bagwell, tenant, and Peter Byrne, and Luke Byrne, executors of Morgan Byrne, deceased; whereas by the law of the land, the said judgment ought to have been given for the said Carey Bagnell, tenant, and Peter Byrne, and Luke Byrne, executors of Morgan Byrne, deceased, against the said George W. Brodrick.

There is also error in this, to wit, that by the record aforesaid it appears, that the court below refused to instruct the jury; "the entry or New Madrid location made by Morgan Byrne in his own name as given in evidence in this case, is proof of legal title to the land, and is sufficient defence against all persons, who do not show better legal title to the same land;" whereas by the laws of the land the court ought to have so instructed the jury.

There is also error in this, to wit, that by the record aforesaid it appears, that the court below refused to instruct the jury; "the patent, a copy of which has been given in evidence by the plaintiffs, did not vest in the patentee any better legal right to the land in question, than he had before the date thereof as against the defendants claiming the same land adversely by other title;" whereas by the law of the land the court ought to have so instructed the jury.

There is also error in this, to wit, that by the record aforesaid it appears, that the court below refused to instruct the jury; "that after the entry, and before the patent, Morgan Byrne had a legal title to the land in question sufficient to enable him to prosecute or defend an action of ejectment therefor; and that the issuing of the patent could not divest that title;" whereas by the law of the land the court ought to have so instructed the jury.

There is also error in this, to wit, that by the record aforesaid it appears, that the court below refused to instruct the jury; "that if the jury believe the patent, copy of which has been offered in evidence by plaintiff, issued on the location made by Morgan Byrne and shown in evidence on part of defendants in this cause, the patent is not such title, or will avail against the location;" whereas by the law of the land the court ought to have so instructed the jury, to be read as before the prayer for judgment. ATTORNEYS.

Wherefore, the said Carey Bagnell, tenant, and Peter Byrne, and Luke Byrne, executors of Morgan Byrne, deceased, pray that the judgment aforesaid, for the errors aforesaid, and other errors in the record and proceedings aforesaid, may be reversed, annulled, and altogether held for nothing, and that they may be restored to all things which they have lost by the occasion of the said judgment, &c.

There is also error in this, to wit, that by the record aforesaid it appears, that the judgment aforesaid, in form aforesaid given, was given for the said George W. Broderick against the said Carey Bagnell, tenant, and the said Peter Byrne, and Luke Byrne, executors of Morgan Byrne, deceased, to be levied of their own proper goods and chattels, &c.; whereas by the law of the land the said judgment ought to have been given, if at all, for the said plaintiff, George W.